

House Study Bill 48 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON MILLER)

A BILL FOR

1 An Act relating to the licensure of ambulatory surgical
2 centers, providing fees and penalties, and including
3 effective date provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 135P.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Ambulatory surgical center*" means a distinct facility
5 that operates exclusively for the purpose of providing surgical
6 services to patients not requiring hospitalization and in which
7 the expected duration of services does not exceed twenty-four
8 hours following an admission. "*Ambulatory surgical center*" does
9 not include individual or group practice offices of private
10 physicians, podiatrists, or dentists that do not contain a
11 distinct area used for outpatient surgical treatment on a
12 regular basis, or that only provide surgery routinely provided
13 in a physician's, podiatrist's, or dentist's office using local
14 anesthesia or conscious sedation; or a portion of a licensed
15 hospital designated for outpatient surgical treatment.

16 2. "*Department*" means the department of inspections and
17 appeals.

18 Sec. 2. NEW SECTION. 135P.2 Purpose.

19 The purpose of this chapter is to protect the public
20 health, safety, and welfare by providing for the licensing and
21 regulation of ambulatory surgical centers.

22 Sec. 3. NEW SECTION. 135P.3 Licensure.

23 A person, acting severally or jointly with any other person,
24 shall not establish, operate, or maintain an ambulatory
25 surgical center in this state without obtaining a license as
26 provided under this chapter.

27 Sec. 4. NEW SECTION. 135P.4 Application for license — fee.

28 1. An applicant for an ambulatory surgical center license
29 shall submit an application to the department. Applications
30 shall be upon such forms and shall include such information
31 as the department may reasonably require, which may include
32 affirmative evidence of ability to comply with reasonable rules
33 and standards prescribed under this chapter.

34 2. a. An application for an initial license for
35 an ambulatory surgical center that is in existence and

1 Medicare-certified prior to July 1, 2014, shall be accompanied
2 by a fee of fifty dollars.

3 *b.* An application for an initial license for an ambulatory
4 surgical center established on or after July 1, 2014, shall
5 be accompanied by a fee sufficient to cover the costs of
6 performing the inspection required in section 135P.8 in an
7 amount as provided in rules adopted by the department.

8 Sec. 5. NEW SECTION. **135P.5 Issuance and renewal of**
9 **license.**

10 1. Upon receipt of an application for license and the
11 license fee, the department shall issue a license if the
12 applicant and the ambulatory surgical center meet the
13 requirements of this chapter and the rules adopted by the
14 department.

15 2. A license shall be issued only for the premises and
16 persons named in the application.

17 3. A license is not transferable or assignable except with
18 the written approval of the department.

19 4. A license shall be posted in a conspicuous place on the
20 licensed premises as prescribed by rule of the department.

21 5. Separate licenses are not required for ambulatory
22 surgical center facilities that are maintained on the same
23 physical site and that have the same ownership or control.
24 Multiple buildings located on the same physical site under the
25 same ownership or control shall be considered one ambulatory
26 surgical center facility for purposes of this chapter and
27 section 135.61, subsection 21, and may operate under one
28 license.

29 6. A license, unless sooner suspended or revoked, shall
30 expire on December 31 of each year and shall be renewed
31 annually. The department shall renew a license upon payment of
32 a five hundred dollar annual license renewal fee and filing of
33 an application for renewal at least thirty days prior to the
34 expiration of the existing license. The annual licensure fee
35 shall be dedicated to support the staffing necessary to conduct

1 the inspections and investigations provided in section 135P.8.

2 Sec. 6. NEW SECTION. 135P.6 Denial, suspension, or
3 revocation of license — hearings and review.

4 1. The department may deny, suspend, or revoke a license in
5 any case where it finds there has been a substantial failure
6 to comply with this chapter or the rules and standards adopted
7 under this chapter.

8 2. The denial, suspension, or revocation of a license by
9 the department and appeal from that action are governed by the
10 procedures for a contested case hearing under chapter 17A.

11 3. *a.* If the department finds, after providing notice of
12 noncompliance and a reasonable time for corrective action, that
13 an ambulatory surgical center is in repeated noncompliance with
14 this chapter or the department's rules but that noncompliance
15 does not endanger public health or safety, the department may
16 issue a conditional license to the ambulatory surgical center
17 as an alternative to suspending or revoking the ambulatory
18 surgical center's license.

19 *b.* The department shall provide notice of its intent to
20 issue a conditional license to the ambulatory surgical center
21 and of the items of noncompliance not less than ten days before
22 the date the conditional license is issued.

23 *c.* The department shall designate a period of not more
24 than one year during which the ambulatory surgical center may
25 operate under a conditional license.

26 *d.* During the period an ambulatory surgical center is
27 operating under a conditional license, the ambulatory surgical
28 center shall correct the items that are in noncompliance and
29 report the corrections to the department for approval.

30 4. The department may suspend or revoke the license of an
31 ambulatory surgical center that does not correct items that
32 are in noncompliance or that does not comply with this chapter
33 or the rules adopted under this chapter within the applicable
34 period.

35 5. The department may issue an emergency order to suspend

1 a license issued under this chapter if the department has
2 reasonable cause to believe that the conduct of the ambulatory
3 surgical center creates an immediate danger to the public
4 health and safety. An emergency suspension is effective
5 immediately without a hearing or notice to the licensee. On
6 written request of the licensee, the department shall conduct
7 a hearing not earlier than the tenth day or later than the
8 thirtieth day after the date the hearing request is received
9 to determine if the emergency suspension is to be continued,
10 modified, or rescinded. The hearing and any appeal are
11 governed by the department's rules for a contested case hearing
12 and chapter 17A.

13 Sec. 7. NEW SECTION. 135P.7 Rules.

14 1. The department, with the advice and approval of the state
15 board of health, shall adopt rules specifying the standards for
16 ambulatory surgical centers to be licensed under this chapter.
17 The rules shall be consistent with and shall not exceed the
18 requirements of this chapter and the conditions for coverage in
19 the federal Medicare program for ambulatory surgical centers
20 under 42 C.F.R. pt. 416.

21 2. The department shall adopt rules as the department deems
22 necessary to implement the provisions of this chapter relating
23 to the issuance, renewal, denial, suspension, and revocation
24 of a license to establish, operate, and maintain an ambulatory
25 surgical center.

26 3. An ambulatory surgical center which is in operation at
27 the time of adoption of any applicable rules or standards under
28 this chapter shall be given a reasonable time, not to exceed
29 one year from the date of adoption, within which to comply with
30 such rules and standards.

31 4. The department shall enforce the rules.

32 Sec. 8. NEW SECTION. 135P.8 Inspections.

33 1. The department shall make or cause to be made inspections
34 or investigations of ambulatory surgical centers to determine
35 compliance with this chapter and applicable rules and

1 standards. The department shall perform inspections on a
2 schedule that is of the same frequency required for inspections
3 of Medicare-certified ambulatory surgical centers.

4 2. The department shall recognize, in lieu of its own
5 licensure inspection, the comparable inspection and inspection
6 findings of a Medicare conditions for coverage survey.

7 3. A department inspector shall not participate in an
8 inspection or investigation of an ambulatory surgical center in
9 which the inspector or a member of the inspector's immediate
10 family works or has worked within the last two years or in
11 which the inspector or the inspector's immediate family has
12 a financial ownership interest. For the purposes of this
13 section, "*immediate family member*" means a spouse, natural or
14 adoptive parent or grandparent, child, grandchild, sibling,
15 stepparent, stepchild, or stepsibling.

16 Sec. 9. NEW SECTION. 135P.9 **Employee background checks.**

17 1. An ambulatory surgical center shall comply with child and
18 dependent adult abuse information and criminal record checks
19 and evaluations in the same manner as provided in section
20 135B.34, except that the authorization of an exemption under
21 section 135B.34, subsection 4, paragraph "b", from requirements
22 for reevaluation of the latest record checks by the department
23 of human services relative to a person being considered for
24 employment in an ambulatory surgical center is subject to all
25 of the following provisions:

26 a. The position with the ambulatory surgical center is
27 substantially the same or has the same job responsibilities as
28 the position for which the previous evaluation was performed.

29 b. Any restrictions placed on the person's employment in the
30 previous evaluation by the department of human services shall
31 remain applicable in the person's employment in the ambulatory
32 surgical center.

33 c. The person subject to the record checks has maintained
34 a copy of the previous evaluation and provides the evaluation
35 to the ambulatory surgical center or the previous employer

1 provides the previous evaluation from the person's personnel
2 file pursuant to the person's authorization. If a physical
3 copy of the previous evaluation is not provided to the
4 ambulatory surgical center, the record checks shall be
5 reevaluated.

6 *d.* Although an exemption may be authorized, the ambulatory
7 surgical center may instead request a reevaluation of the
8 record checks and may employ the person while the reevaluation
9 is being performed.

10 2. An ambulatory surgical center licensed in this state
11 may access the single contact repository established by the
12 department pursuant to section 135C.33 as necessary for the
13 ambulatory surgical center to perform record checks of persons
14 employed or being considered for employment by the ambulatory
15 surgical center.

16 Sec. 10. NEW SECTION. 135P.10 Confidentiality.

17 The department's final findings or the final survey findings
18 of an accrediting body with respect to compliance by an
19 ambulatory surgical center with requirements for licensing
20 or accreditation shall be made available to the public in a
21 readily available form and place. Other information relating
22 to an ambulatory surgical center obtained by the department
23 which does not constitute the department's findings from an
24 inspection of the ambulatory surgical center or the final
25 survey findings of the accrediting body shall not be made
26 available to the public, except in proceedings involving the
27 denial, suspension, or revocation of a license under this
28 chapter. The name of a person who files a complaint with the
29 department shall remain confidential and shall not be subject
30 to discovery, subpoena, or other means of legal compulsion for
31 its release to a person other than department employees or
32 agents involved in the investigation of the complaint.

33 Sec. 11. NEW SECTION. 135P.11 Injunction.

34 Notwithstanding the existence or pursuit of any other
35 remedy, the department may, in the manner provided by law,

1 maintain an action in the name of the state for injunction
2 or other process against any person to restrain or prevent
3 the establishment, operation, or maintenance of an ambulatory
4 surgical center without a license.

5 Sec. 12. NEW SECTION. 135P.12 **Judicial review.**

6 Judicial review of an action of the department may be sought
7 in accordance with chapter 17A. Notwithstanding the provisions
8 of chapter 17A, petitions for judicial review may be filed
9 in the district court of the county in which the ambulatory
10 surgical center is located or is to be located and the status
11 quo of the petitioner or licensee shall be preserved pending
12 final disposition of the judicial review matter.

13 Sec. 13. NEW SECTION. 135P.13 **Penalties.**

14 Any person establishing, operating, or maintaining any
15 ambulatory surgical center without a license commits a serious
16 misdemeanor, and each day of continuing violation after
17 conviction shall be considered a separate offense.

18 Sec. 14. Section 135.11, Code 2013, is amended by adding the
19 following new subsection:

20 NEW SUBSECTION. 32. Adopt rules requiring ambulatory
21 surgical centers to report quality data to the department of
22 public health that is consistent with the data required to be
23 reported to the centers for Medicare and Medicaid services
24 of the United States department of health and human services
25 as authorized by the Medicare Improvements and Extension Act
26 of 2006 under Title I of the Tax Relief and Health Care Act
27 of 2006, Pub. L. No. 109-432, and the regulations adopted
28 under such Acts. Notwithstanding any provision of law to
29 the contrary, nothing in this subsection shall require an
30 ambulatory surgical center to provide health data to the
31 department of public health or any other public or private
32 entity that is in addition to, different than, or exceeds
33 the quality data required to be reported to the centers for
34 Medicare and Medicaid services of the United States department
35 of health and human services.

1 A license is to be issued only for the premises and persons
2 named in the application; is not transferable or assignable
3 except with the written approval of the department; and is
4 required to be posted in a conspicuous place on the licensed
5 premises as prescribed by rule of the department. The bill
6 provides that separate licenses are not required for ambulatory
7 surgical center facilities that are maintained on the same
8 physical site and that have the same ownership or control.
9 Multiple buildings located on the same physical site under the
10 same ownership or control shall be considered one ambulatory
11 surgical center facility for purposes of the new Code chapter
12 and Code chapter 135, division VI, relating to the health
13 facilities council and certificate of need provisions, and are
14 to be permitted to operate under one license. Licenses expire
15 on December 31 of each year and are required to be renewed
16 annually. The bill directs the department to renew a license
17 upon payment of a \$500 annual license renewal fee and filing
18 of an application for renewal at least 30 days prior to the
19 expiration of the existing license. The annual licensure fee
20 is to be dedicated to support the staffing necessary to conduct
21 the inspections and investigations under the Code chapter.

22 The bill provides for denial, suspension, or revocation of
23 licenses. A license may be denied, suspended, or revoked if
24 the department finds there has been a substantial failure to
25 comply with the Code chapter or the rules and standards adopted
26 under the Code chapter. The denial, suspension, or revocation
27 of a license by the department and appeal from that action are
28 governed by the procedures for a contested case hearing under
29 Code chapter 17A. The bill authorizes the department, after
30 providing notice of noncompliance and a reasonable time for
31 corrective action, and if the noncompliance does not endanger
32 public health or safety, to issue a conditional license to the
33 ambulatory surgical center as an alternative to suspending or
34 revoking its license.

35 The bill also authorizes the department to issue an

1 emergency order to suspend a license if the department has
2 reasonable cause to believe that the conduct of the ambulatory
3 surgical center creates an immediate danger to the public
4 health or safety. On written request of the licensee, the
5 department is required to conduct a hearing to determine if
6 the emergency suspension is to be continued, modified, or
7 rescinded. The hearing and any appeal are governed by the
8 department's rules for a contested case hearing and Code
9 chapter 17A.

10 The bill directs the department to adopt rules with the
11 advice and approval of the state board of health to specify
12 the standards for ambulatory surgical centers. The rules are
13 required to be consistent with and not exceed the requirements
14 of the Code chapter and the conditions for coverage in the
15 federal Medicare program for ambulatory surgical centers.
16 The department is also directed to adopt rules relating to
17 provisions of the Code chapter relating to the issuance,
18 renewal, denial, suspension, and revocation of a license to
19 establish, operate, and maintain an ambulatory surgical center.
20 If an ambulatory surgical center is in operation at the time of
21 adoption of any applicable rules or standards, the center is
22 to be given a reasonable time, not to exceed one year from the
23 date of adoption, within which to comply with such rules and
24 standards.

25 The bill provides for inspections or investigations of
26 ambulatory surgical centers, and directs that the department
27 shall perform inspections on a schedule that is of the same
28 frequency required for inspections of Medicare-certified
29 ambulatory surgical centers. The bill also requires the
30 department to recognize, in lieu of its own licensure
31 inspection, the comparable inspection and inspection findings
32 of a Medicare conditions for coverage survey.

33 The bill prohibits a department inspector from participating
34 in an inspection or investigation of an ambulatory surgical
35 center in which the inspector or a member of the inspector's

1 immediate family works or has worked within the last two years
2 or in which the inspector or the inspector's immediate family
3 has a financial ownership interest.

4 The bill requires an ambulatory surgical center to comply
5 with child and dependent adult abuse information and criminal
6 record checks and evaluations in the same manner as provided
7 for hospitals, but specifically provides that the authorization
8 of an exemption from a reevaluation of the person's criminal
9 or abuse record prior to commencing employment is subject to
10 specific provisions. The bill also authorizes an ambulatory
11 surgical center to access the single contact repository
12 established by the department as necessary for the ambulatory
13 surgical center to perform record checks of persons employed
14 or being considered for employment by the ambulatory surgical
15 center.

16 The bill provides confidentiality provisions relating to
17 ambulatory surgical center information. The final findings or
18 the final survey findings of an accrediting body with respect
19 to compliance by an ambulatory surgical center are to be
20 made available to the public in a readily available form and
21 place. Other information relating to an ambulatory surgical
22 center shall not be made available to the public, except in
23 proceedings involving the denial, suspension, or revocation of
24 a license. The name of a person who files a complaint with
25 the department is required to remain confidential and not
26 be subject to discovery, subpoena, or other means of legal
27 compulsion.

28 The bill provides for injunctive relief and judicial review.

29 The bill provides that any person establishing, operating,
30 or maintaining an ambulatory surgical center without a license
31 commits a serious misdemeanor, and each day of continuing
32 violation after conviction shall be considered a separate
33 offense. A serious misdemeanor is punishable by confinement
34 for no more than one year and a fine of at least \$315 but not
35 more than \$1,875.

1 The bill also directs the department of public health
2 to adopt rules requiring ambulatory surgical centers to
3 report quality data to the department of public health that
4 is consistent with the data required to be reported to the
5 centers for Medicare and Medicaid services of the United States
6 department of health and human services. However, the rules
7 are not to require an ambulatory surgical center to provide
8 health data to the department of public health or any other
9 public or private entity that is in addition to, different
10 than, or exceeds the quality data required to be reported to
11 the centers for Medicare and Medicaid services of the United
12 States department of health and human services.
13 The bill takes effect July 1, 2014.